

# Senate File 2206 - Introduced

SENATE FILE \_\_\_\_\_  
BY HARTSUCH

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act concerning investment of certain public funds in companies  
2 doing business in countries that support international  
3 terrorism by the treasurer of state, public retirement systems  
4 in Iowa, and the state board of regents.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
6 TLSB 5134XS 82  
7 ec/nh/8

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1 1 Section 1. NEW SECTION. 12G.1 LEGISLATIVE FINDINGS AND  
2 INTENT.  
3 The general assembly is deeply concerned over countries  
4 that support acts of international terrorism. Therefore, the  
5 general assembly intends that state funds and funds  
6 administered by the state, including public employee  
7 retirement funds, should not be invested in companies that  
8 provide power production-related services, mineral extraction  
9 activities, oil-related activities, or military equipment to  
10 the governments of countries that support international  
11 terrorism.  
12 Sec. 2. NEW SECTION. 12G.2 DEFINITIONS.  
13 As used in this chapter, unless the context otherwise  
14 requires:  
15 1. "Active business operations" means all business  
16 operations that are not inactive business operations.  
17 2. "Business operations" means engaging in commerce in any  
18 form in any country supporting terrorism, including by  
19 acquiring, developing, maintaining, owning, selling,  
20 possessing, leasing, or operating equipment, facilities,  
21 personnel, products, services, personal property, real  
22 property, or any other apparatus of business or commerce.  
23 3. "Company" means any sole proprietorship, organization,  
24 association, corporation, partnership, joint venture, limited  
25 partnership, limited liability partnership, limited liability  
26 company, or other entity or business association, including  
27 all wholly-owned subsidiaries, majority-owned subsidiaries,  
28 parent companies, or affiliates of such entities or business  
29 associations, that exists for profit-making purposes.  
30 4. "Country supporting terrorism" means a country  
31 determined by the United States secretary of state to be a  
32 state sponsor of terrorism by repeatedly providing support for  
33 acts of international terrorism. "Country supporting  
34 terrorism" does not mean the government of Sudan as defined in  
35 section 12F.2 or a country that is no longer determined by the  
2 1 secretary of state to be a state sponsor of terrorism.  
2 2 5. "Direct holdings" in a company means all securities of  
2 3 that company held directly by the public fund or in an account  
2 4 or fund in which the public fund owns all shares or interests.  
2 5 6. "Inactive business operations" means the mere continued  
2 6 holding or renewal of rights to property previously operated  
2 7 for the purpose of generating revenues but not presently  
2 8 deployed for such purpose.  
2 9 7. "Indirect holdings" in a company means all securities  
2 10 of that company held in an account or fund managed by one or  
2 11 more persons not employed by the public fund, in which the  
2 12 public fund owns shares or interests together with other  
2 13 investors not subject to the provisions of this chapter.  
2 14 Indirect holdings include but are not limited to mutual funds,  
2 15 fund of funds, private equity funds, hedge funds, and real  
2 16 estate funds.  
2 17 8. "Military equipment" means weapons, arms, military  
2 18 supplies, and equipment that readily may be used for military

2 19 purposes including but not limited to radar systems or  
2 20 military-grade transport vehicles, or supplies or services  
2 21 sold or provided directly or indirectly to any terrorist  
2 22 organization.

2 23 9. "Mineral extraction activities" include exploring,  
2 24 extracting, processing, transporting, or wholesale selling or  
2 25 trading of elemental minerals or associated metal alloys or  
2 26 oxides, including gold, copper, chromium, chromite, diamonds,  
2 27 iron, iron ore, silver, tungsten, uranium, and zinc, as well  
2 28 as facilitating such activities, including by providing  
2 29 supplies or services in support of such activities.

2 30 10. "Oil-related activities" include but are not limited  
2 31 to owning rights to oil blocks; exporting, extracting,  
2 32 producing, refining, processing, exploring for, transporting,  
2 33 selling, or trading of oil; constructing, maintaining, or  
2 34 operating a pipeline, refinery, or other oil field  
2 35 infrastructure; and facilitating such activities, including by  
3 1 providing supplies or services in support of such activities,  
3 2 provided that the mere retail sale of gasoline and related  
3 3 consumer products shall not be considered oil-related  
3 4 activities.

3 5 11. "Power production activities" means any business  
3 6 operation that involves a project commissioned by any  
3 7 government entity of a country supporting terrorism whose  
3 8 purpose is to facilitate power generation and delivery  
3 9 including but not limited to establishing power generating  
3 10 plants or hydroelectric dams, selling or installing components  
3 11 for the project, providing service contracts related to the  
3 12 installation or maintenance of the project, as well as  
3 13 facilitating such activities, including by providing supplies  
3 14 or services in support of such activities.

3 15 12. "Public fund" means the treasurer of state, the state  
3 16 board of regents, the public safety peace officers' retirement  
3 17 system created in chapter 97A, the Iowa public employees'  
3 18 retirement system created in chapter 97B, the statewide fire  
3 19 and police retirement system created in chapter 411, or the  
3 20 judicial retirement system created in chapter 602.

3 21 13. "Scrutinized company" means any company that is not a  
3 22 social development company that meets any of the following  
3 23 criteria:

3 24 a. The company has business operations that involve  
3 25 contracts with or provision of supplies or services to the  
3 26 government of any country supporting terrorism, companies in  
3 27 which the government of any country supporting terrorism has  
3 28 any direct or indirect equity share, government-commissioned  
3 29 consortiums or projects of any country supporting terrorism,  
3 30 or companies involved in government-commissioned consortiums  
3 31 or projects of any country supporting terrorism; and meets any  
3 32 of the additional following criteria:

3 33 (1) More than ten percent of the company's revenues or  
3 34 assets linked to any country supporting terrorism involve  
3 35 oil-related activities or mineral extraction activities and  
4 1 the company has failed to take substantial action.

4 2 (2) More than ten percent of the company's revenues or  
4 3 assets linked to any country supporting terrorism involve  
4 4 power production activities and the company has failed to take  
4 5 substantial action.

4 6 b. The company supplies military equipment to any country  
4 7 supporting terrorism, unless it clearly shows that the  
4 8 military equipment cannot be used to facilitate international  
4 9 acts of terrorism.

4 10 14. "Social development company" means a company whose  
4 11 primary purpose in any country supporting terrorism is to  
4 12 provide humanitarian goods or services, including medicine or  
4 13 medical equipment, agricultural supplies or infrastructure,  
4 14 educational opportunities, journalism-related activities,  
4 15 information or information materials, spiritual-related  
4 16 activities, services of a purely clerical or reporting nature,  
4 17 food, clothing, or general consumer goods that are unrelated  
4 18 to oil-related activities, mineral extraction activities, or  
4 19 power production activities.

4 20 15. "Substantial action" means adopting, publicizing, and  
4 21 implementing a formal plan to cease scrutinized business  
4 22 operations within one year and to refrain from any such new  
4 23 business operations.

4 24 Sec. 3. NEW SECTION. 12G.3 IDENTIFICATION OF COMPANIES  
4 25 == NOTICE.

4 26 1. a. By July 1, 2008, the public fund shall make its  
4 27 best efforts to identify all scrutinized companies in which  
4 28 the public fund has direct or indirect holdings or could  
4 29 possibly have such holdings in the future and shall create and

4 30 make available to the public a scrutinized companies list for  
4 31 that public fund. In addition, as expeditiously as possible,  
4 32 the public fund shall update the list if a country is  
4 33 determined to be a country supporting terrorism or is no  
4 34 longer determined to be a country supporting terrorism after  
4 35 July 1, 2008. The list shall further identify whether the  
5 1 company has inactive business operations or active business  
5 2 operations. The public fund shall review and update, if  
5 3 necessary, the scrutinized companies list and the  
5 4 determination of whether a company has inactive or active  
5 5 business operations on a quarterly basis thereafter.  
5 6 b. In making its best efforts to identify scrutinized  
5 7 companies and companies with inactive business operations or  
5 8 active business operations, the public fund may review and  
5 9 rely, in the best judgment of the public fund, on publicly  
5 10 available information regarding companies with business  
5 11 operations in any country supporting terrorism, and including  
5 12 other information that may be provided by nonprofit  
5 13 organizations, research firms, international organizations,  
5 14 and government entities. The public fund may also contact  
5 15 asset managers and institutional investors for the public fund  
5 16 to identify scrutinized companies based upon  
5 17 industry-recognized lists of such companies that the public  
5 18 fund may have indirect holdings in.

5 19 2. a. For each company on the scrutinized companies list  
5 20 with only inactive business operations in which the public  
5 21 fund has direct or indirect holdings, the public fund shall  
5 22 send a written notice informing the company of the  
5 23 requirements of this chapter and encouraging it to continue to  
5 24 refrain from initiating active business operations in any  
5 25 country supporting terrorism until it is able to avoid  
5 26 scrutinized business operations. The public fund shall  
5 27 continue to provide such written notice on an annual basis if  
5 28 the company remains a scrutinized company with inactive  
5 29 business operations.

5 30 b. For each company on the scrutinized companies list with  
5 31 active business operations in which the public fund has direct  
5 32 or indirect holdings, the public fund shall send a written  
5 33 notice informing the company of its status as a scrutinized  
5 34 company with active business operations and that it may become  
5 35 subject to divestment and restrictions on investing in the  
6 1 company by the public fund. The notice shall offer the  
6 2 company the opportunity to clarify its activities in any  
6 3 country supporting terrorism and shall encourage the company  
6 4 to either cease its scrutinized business operations or convert  
6 5 such operations to inactive business operations in order to  
6 6 avoid becoming subject to divestment and restrictions on  
6 7 investment in the company by the public fund. The public fund  
6 8 shall continue to provide such written notice on an annual  
6 9 basis if the company remains a scrutinized company with active  
6 10 business operations.

6 11 Sec. 4. NEW SECTION. 12G.4 PROHIBITED INVESTMENTS ==  
6 12 DIVESTMENT.

6 13 1. The public fund shall not acquire publicly traded  
6 14 securities of a company on the public fund's most recent  
6 15 scrutinized companies list with active business operations so  
6 16 long as such company remains on the public fund's scrutinized  
6 17 companies list as a company with active business operations as  
6 18 provided in this section.

6 19 2. a. The public fund shall sell, redeem, divest, or  
6 20 withdraw all publicly traded securities of a company on the  
6 21 public fund's list of scrutinized companies with active  
6 22 business operations, so long as the company remains on that  
6 23 list, no sooner than ninety days, but no later than eighteen  
6 24 months, following the first written notice sent to the  
6 25 scrutinized company with active business operations as  
6 26 required by section 12G.3.

6 27 b. This subsection shall not be construed to require the  
6 28 premature or otherwise imprudent sale, redemption, divestment,  
6 29 or withdrawal of an investment, but such sale, redemption,  
6 30 divestment, or withdrawal shall be completed as provided by  
6 31 this subsection.

6 32 3. The requirements of this section shall not apply to the  
6 33 following:

6 34 a. A company which the United States government  
6 35 affirmatively declares to be excluded from its present or any  
7 1 future federal sanctions regime relating to any terrorist  
7 2 country.

7 3 b. Indirect holdings of a scrutinized company with active  
7 4 business operations. The public fund shall, however, submit  
7 5 letters to the managers of such investment funds containing

7 6 companies with scrutinized active business operations  
7 7 requesting that they consider removing such companies from the  
7 8 fund or create a similar fund with indirect holdings devoid of  
7 9 such companies. If the manager creates a similar fund, the  
7 10 public fund is encouraged to replace all applicable  
7 11 investments with investments in the similar fund consistent  
7 12 with prudent investing standards.

7 13 Sec. 5. NEW SECTION. 12G.5 REPORTS.

7 14 1. SCRUTINIZED COMPANIES LIST. Each public fund shall,  
7 15 within thirty days after the scrutinized companies list is  
7 16 created or updated as required by section 12G.3, make the list  
7 17 available to the public.

7 18 2. ANNUAL REPORT. On October 1, 2009, and each October 1  
7 19 thereafter, each public fund shall make available to the  
7 20 public, and file with the general assembly, an annual report  
7 21 covering the prior fiscal year that includes the following:

7 22 a. The scrutinized companies list as of the end of the  
7 23 fiscal year.

7 24 b. A summary of all written notices sent as required by  
7 25 section 12G.3 during the fiscal year.

7 26 c. All investments sold, redeemed, divested, or withdrawn  
7 27 as provided in section 12G.4 during the fiscal year.

7 28 Sec. 6. NEW SECTION. 12G.6 LEGAL OBLIGATIONS.

7 29 With respect to actions taken in compliance with this  
7 30 chapter, including all good faith determinations regarding  
7 31 companies as required by this chapter, the public fund shall  
7 32 be exempt from any conflicting statutory or common law  
7 33 obligations, including any such obligations in respect to  
7 34 choice of asset managers, investment funds, or investments for  
7 35 the public fund's securities portfolios.

8 1 Sec. 7. NEW SECTION. 12G.7 APPLICABILITY.

8 2 The requirements of sections 12G.3, 12G.4, and 12G.5 of  
8 3 this chapter shall not apply upon the occurrence of any of the  
8 4 following:

8 5 1. The Congress or president of the United States, through  
8 6 legislation or executive order, declares that mandatory  
8 7 divestment of the type provided for in this chapter interferes  
8 8 with the conduct of United States foreign policy.

8 9 2. A controlling circuit or district court of the United  
8 10 States issues an opinion that declares the mandatory  
8 11 divestment of the type provided for in this chapter or similar  
8 12 statutes of other states is preempted by the federal law of  
8 13 the United States.

8 14 Sec. 8. Section 12.8, unnumbered paragraph 1, Code  
8 15 Supplement 2007, is amended to read as follows:

8 16 The treasurer of state shall invest or deposit, subject to  
8 17 ~~chapter chapters~~ 12F and 12G and as provided by law, any of  
8 18 the public funds not currently needed for operating expenses  
8 19 and shall do so upon receipt of monthly notice from the  
8 20 director of the department of administrative services of the  
8 21 amount not so needed. In the event of loss on redemption or  
8 22 sale of securities invested as prescribed by law, and if the  
8 23 transaction is reported to the executive council, neither the  
8 24 treasurer nor director of the department of administrative  
8 25 services is personally liable but the loss shall be charged  
8 26 against the funds which would have received the profits or  
8 27 interest of the investment and there is appropriated from the  
8 28 funds the amount so required.

8 29 Sec. 9. Section 97A.7, subsection 1, Code Supplement 2007,  
8 30 is amended to read as follows:

8 31 1. The board of trustees shall be the trustees of the  
8 32 several funds created by this chapter as provided in section  
8 33 97A.8 and shall have full power to invest and reinvest such  
8 34 funds subject to the terms, conditions, limitations, and  
8 35 restrictions imposed by subsection 2 of this section and  
9 1 ~~chapter chapters~~ 12F and 12G, and subject to like terms,  
9 2 conditions, limitations, and restrictions said trustees shall  
9 3 have full power to hold, purchase, sell, assign, transfer, or  
9 4 dispose of any of the securities and investments in which any  
9 5 of the funds created herein shall have been invested, as well  
9 6 as of the proceeds of said investments and any moneys  
9 7 belonging to said funds. The board of trustees may authorize  
9 8 the treasurer of state to exercise any of the duties of this  
9 9 section. When so authorized the treasurer of state shall  
9 10 report any transactions to the board of trustees at its next  
9 11 monthly meeting.

9 12 Sec. 10. Section 97B.4, subsection 5, Code Supplement  
9 13 2007, is amended to read as follows:

9 14 5. INVESTMENTS. The system, through the chief investment  
9 15 officer, shall invest, subject to ~~chapter chapters~~ 12F and 12G  
9 16 and in accordance with the investment policy and goal

9 17 statement established by the board, the portion of the  
9 18 retirement fund which, in the judgment of the system, is not  
9 19 needed for current payment of benefits under this chapter  
9 20 subject to the requirements of section 97B.7A.  
9 21 Sec. 11. Section 262.14, unnumbered paragraph 1, Code  
9 22 Supplement 2007, is amended to read as follows:  
9 23 The board may invest funds belonging to the institutions,  
9 24 subject to ~~chapter chapters~~ 12F and 12G and the following  
9 25 regulations:  
9 26 Sec. 12. Section 411.7, subsection 1, Code Supplement  
9 27 2007, is amended to read as follows:  
9 28 1. The board of trustees is the trustee of the fire and  
9 29 police retirement fund created in section 411.8 and shall  
9 30 annually establish an investment policy to govern the  
9 31 investment and reinvestment of the moneys in the fund, subject  
9 32 to the terms, conditions, limitations, and restrictions  
9 33 imposed by subsection 2 and ~~chapter chapters~~ 12F and 12G.  
9 34 Subject to like terms, conditions, limitations, and  
9 35 restrictions the system has full power to hold, purchase,  
10 1 sell, assign, transfer, or dispose of any of the securities  
10 2 and investments in which the fund has been invested, as well  
10 3 as of the proceeds of the investments and any moneys belonging  
10 4 to the fund.  
10 5 Sec. 13. Section 602.9111, subsection 1, Code Supplement  
10 6 2007, is amended to read as follows:  
10 7 1. So much of the judicial retirement fund as may not be  
10 8 necessary to be kept on hand for the making of disbursements  
10 9 under this article shall be invested by the treasurer of state  
10 10 in any investments authorized for the Iowa public employees'  
10 11 retirement system in section 97B.7A and subject to the  
10 12 requirements of ~~chapter chapters~~ 12F and 12G, and the earnings  
10 13 therefrom shall be credited to the fund. The treasurer of  
10 14 state may execute contracts and agreements with investment  
10 15 advisors, consultants, and investment management and benefit  
10 16 consultant firms in the administration of the judicial  
10 17 retirement fund.

#### 10 18 EXPLANATION

10 19 This bill restricts the treasurer of state, the state board  
10 20 of regents, the Iowa public employees' retirement system  
10 21 (IPERS), the public safety peace officers' retirement system,  
10 22 the statewide fire and police retirement system, and the  
10 23 judicial retirement system, defined as public funds, from  
10 24 directly investing in certain companies with active business  
10 25 operations in any country supporting terrorism. "Country  
10 26 supporting terrorism" is defined as a country determined by  
10 27 the United States secretary of state to be a state sponsor of  
10 28 terrorism. The current list of countries determined to be a  
10 29 state sponsor of terrorism includes Cuba, Iran, North Korea,  
10 30 Sudan, and Syria. The bill, however, excludes from the  
10 31 definition of country supporting terrorism the government of  
10 32 Sudan, which is currently addressed in Code chapter 12F. The  
10 33 bill also adds notice requirements as to the public funds  
10 34 relative to companies with inactive business operations in any  
10 35 country supporting terrorism.

11 1 The bill requires each public fund to develop and maintain  
11 2 a list of scrutinized companies with active and inactive  
11 3 business operations in any country supporting terrorism that  
11 4 the fund has direct or indirect holdings in or in which the  
11 5 fund may invest in the future. Each public fund shall  
11 6 determine this list by July 1, 2008, and update it on a  
11 7 quarterly basis and when a country is added or removed as a  
11 8 country supporting terrorism. The bill defines scrutinized  
11 9 companies as those companies that have contracts with the  
11 10 government of any country supporting terrorism and involve  
11 11 some oil-related or power production activities, or supply  
11 12 military equipment to any country supporting terrorism. Once  
11 13 a company is listed on the scrutinized companies list of a  
11 14 public fund, the bill requires the public fund to send a  
11 15 notice to that company relative to the requirements of the  
11 16 bill. If the company has inactive business operations, the  
11 17 notice shall describe the requirements of the bill and  
11 18 encourage the company not to engage in active business  
11 19 operations. If the company has active business operations,  
11 20 the notice shall provide that the company may qualify for  
11 21 divestment and other investment restrictions by the public  
11 22 fund.

11 23 New Code section 12G.4 requires that a public fund not  
11 24 invest in, and shall divest from, holdings in a scrutinized  
11 25 company with active business operations. If the public fund  
11 26 has direct holdings in the company, the public fund shall  
11 27 proceed to divest all assets with that company in 18 months so

11 28 long as the company continues active business operations in  
11 29 any country supporting terrorism. The bill provides that a  
11 30 public fund shall not be required to divest or refrain from  
11 31 investing in a company if the federal government so provides  
11 32 or the public fund has indirect holdings, and not direct  
11 33 holdings, in that company. However, public funds are  
11 34 encouraged to move their indirect holdings to funds that do  
11 35 not include scrutinized companies with active business  
12 1 operations. The bill defines indirect holdings to include  
12 2 shares in an account or fund managed by persons not employed  
12 3 by the public fund, including mutual funds, private equity  
12 4 funds, and other similar funds.  
12 5 The bill further requires each public fund to prepare and  
12 6 make available to the public, and file with the general  
12 7 assembly, an annual report, beginning October 1, 2009,  
12 8 concerning actions taken by the public fund relative to the  
12 9 requirements of this new Code chapter in the previous fiscal  
12 10 year.  
12 11 The bill provides that the requirements of the bill cease  
12 12 to be applicable if Congress or the president of the United  
12 13 States declares that mandatory divestment is contrary to  
12 14 United States foreign policy or a controlling federal court  
12 15 declares the divestment requirements of the bill or similar  
12 16 statutes from other states is preempted by federal law.  
12 17 LSB 5134XS 82  
12 18 ec/nh/8